

REMARKS/ARGUMENTS

Favorable consideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 26-50 are presently pending in this application, Claims 28, 29, 31-33, 40, 48 and 49 having been withdrawn from further consideration by the Examiner, and Claims 26, 27, 30, 34-36, 39, and 41-44 having been amended by the present amendment.

In the outstanding Office Action, the drawings were objected to because of informalities; Claims 26, 27, 30, 34-38 and 41-43 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite; Claims 26, 27, 30, 34-36, 38, 39, 41, 42, 44-47 and 50 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 97/14326 (hereinafter "WO '326"); and Claims 26, 30, 34-37, 39, 41-44, 47 and 50 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 98/51177 (hereinafter "WO '177").

In response to the objection to the drawings, submitted herewith is a separate LETTER SUBMITTING DRAWING SHEET(S), submitting for approval new Figures 9a, 9b, 10a and 10b. Specifically, Figures 9a, 9b, 10a and 10b illustrating the subject matters recited in Claims 37 and 38 have been added as required by the Examiner.

Claim 26 has been amended herein. This claim amendment is believed to find clear support in the claims, specification, and drawings as originally filed.¹ Hence, no new matter is believed to be added thereby.

With regard to the rejection under 35 U.S.C. §112, second paragraph, Claims 26, 27, 30, 34-36, 39, and 41-44 have been amended to clarify the subject matter recited therein. Thus, Claims 26, 27, 30, 34-36, 39, and 41-44 are believed to be in compliance with the requirements of the statute.

¹ See, for example, Specification, Figs. 1 and 2.

Briefly recapitulating, Claim 26 as currently amended is directed to a breathable shoe including an assembly which wraps around a foot insertion region and comprises a breathable upper, at least one membrane including a material which is waterproof and breathable, connected with the breathable upper and associated with the assembly in a downward region, a sole including perforated elastomer, joined to the breathable upper and sealed perimetrically to the membrane, a protective element including a material which is resistant to hydrolysis, water-repellent, breathable or perforated, positioned below the at least one membrane in a space between an upper part and an internal part of the sole.

WO '326 and WO '177 each disclose a vapor-permeable shoe. However, neither WO '326 nor WO '177 teaches "at least one membrane including a material which is waterproof and breathable, *connected with said breathable upper* and associated with said assembly in a downward region" as recited in amended Claim 26 (emphasis added in *Italic*). Specifically, WO '326 discloses the mid-sole 104 including the membrane 105.² WO '177 discloses the mid-sole 14 including at least one membrane 15.³ However, neither the membrane 105 nor the membrane 15 is connected with the breathable upper. Therefore, the structure recited in amended Claim 26 is believed to be clearly distinguishable from WO '326 and WO '177, and thus is not anticipated thereby.

Likewise, independent Claim 44 as amended is believed to include subject matter substantially similar to what is recited in amended Claim 26 to the extent discussed above. Thus, Claim 44 is also distinguishable from WO '326 and WO '177.

For the foregoing reasons, Claims 26 and 44 are believed to be allowable. Furthermore, since Claims 27, 30, 34-39, 41-43, 45-47 and 50 depend ultimately from either Claim 26 or 44, substantially the same arguments set forth above also apply to these dependent claims. Hence, Claims 27, 30, 34-39, 41-43, 45-47 and 50 are believed to be

² See WO '326, Abstract.

³ See WO '177, Abstract.

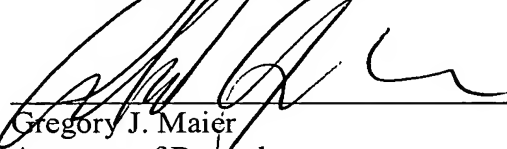
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allowable as well.

In view of the amendments and discussions presented above, Applicant respectfully submits that the present application is in condition for allowance, and an early action favorable to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Attorney of Record
Registration No. 25,599

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)

Akihiro Yamazaki
Registration No. 46,155

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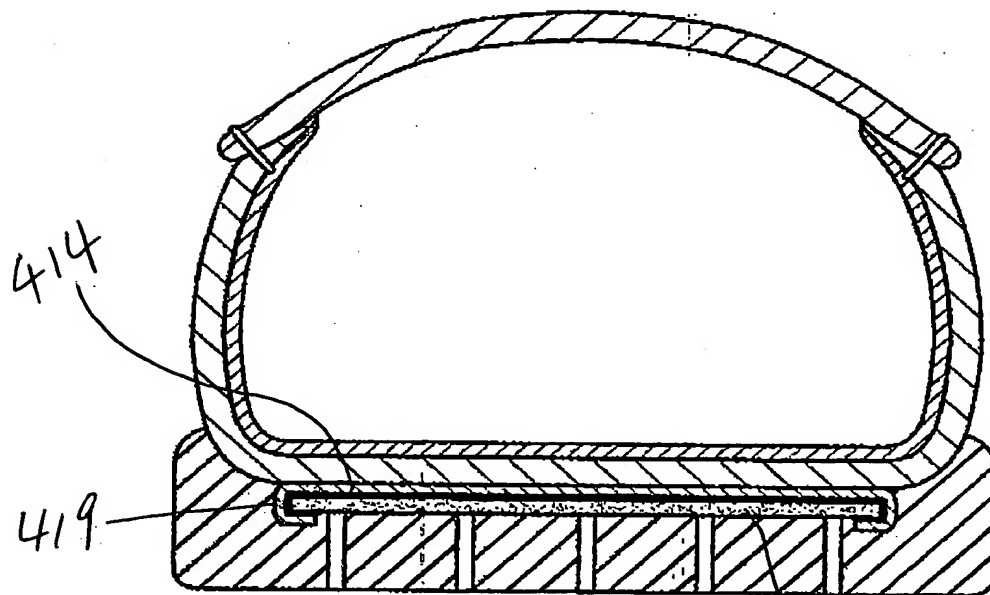


Fig. 9a

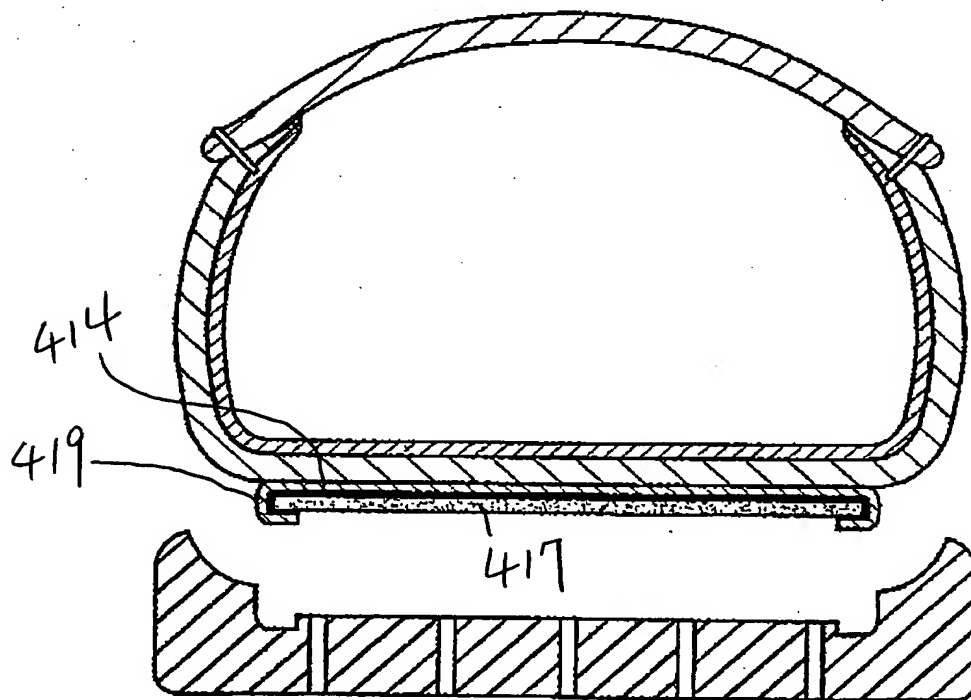


Fig. 9b

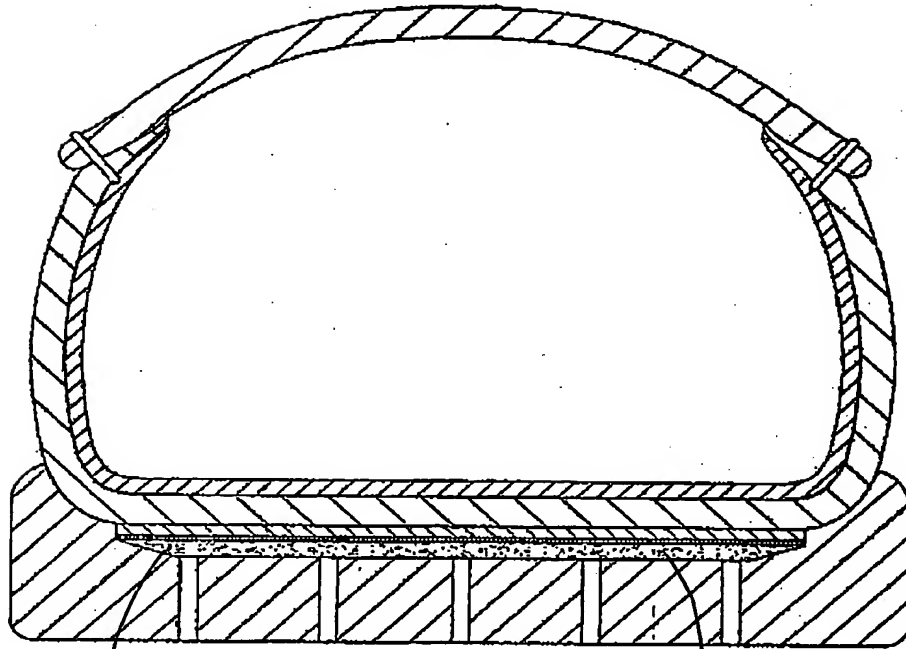


Fig. 10a

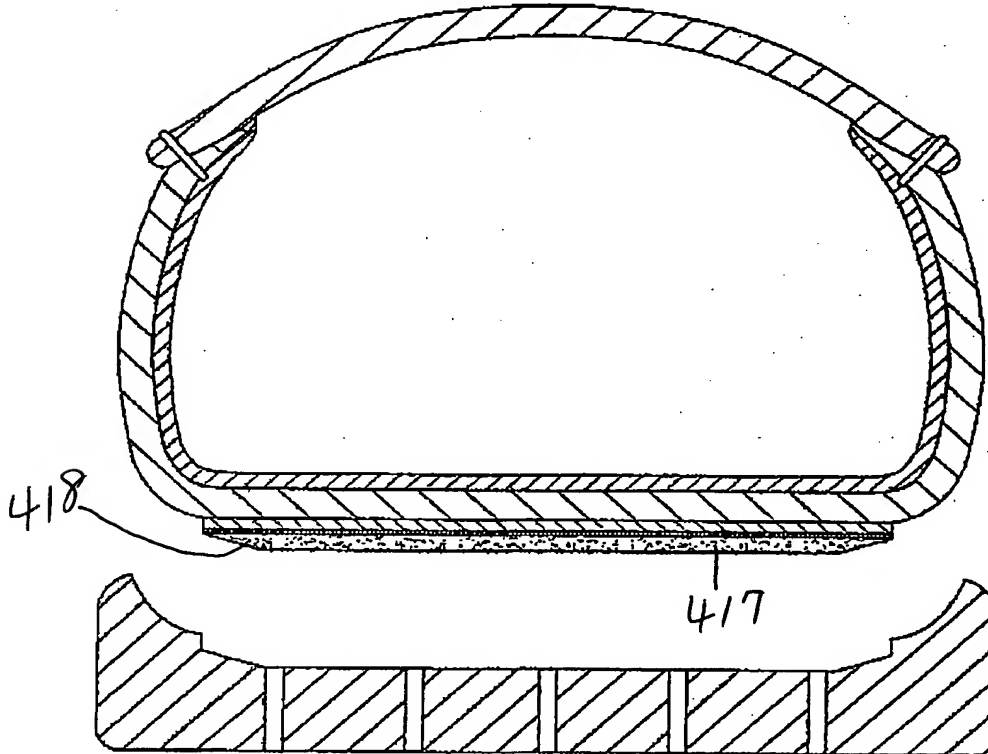


Fig. 10b